

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PETER AND STEPHANIE NEWSON,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, INC. DBA  
AMERICA'S WHOLESALE LENDER,  
MORTGAGE ELECTRONIC  
REGISTRATIONS SYSTEMS, INC.,  
BANKERS ALLIANCE INC., JULIE  
WHITESIDE, and DOES 1-20, inclusive,

Defendants.

Case No: C 09-5288 SBA

**ORDER**

Docket 41, 44

Plaintiffs, Dr. Peter Newsom and Stephanie Newsom (collectively "Plaintiffs"), allege that they were defrauded by their lender, mortgage broker and others in connection with the refinancing of their home in Woodside, California. On May 19, 2010, the Court granted in part and denied in part Defendant Countrywide Home Loans, Inc. dba America's Wholesale Lender's ("Defendant") motion to dismiss the Second Amended Complaint. Among other things, the Court ruled that the Home Owners Loan Act of 1933 ("HOLA") preempted Plaintiff's claims for violation of California's Unfair Competition Law and fraud. The Court granted leave to amend with respect to certain of the Plaintiffs' claims. In accordance with the Court's instructions, Plaintiffs filed a Third Amended Complaint on May 26, 2010, which Defendants have now moved to dismiss.

Subsequently, Plaintiffs filed a motion for leave to file a motion for reconsideration under Civil Local Rule 7-9. Plaintiffs state that they recently learned that Defendant is not a Federal Savings and Loan Association covered by HOLA. Though styled a motion for leave to file a motion for reconsideration, Plaintiffs, in fact, are seeking "the opportunity to amend"

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1 their pleadings in order to reinstate the claims which the Court found were preempted.

2 (Docket 41 at 2.) Defendant has filed a statement of non-opposition to Plaintiffs' motion.

3 At this juncture, the operative pleading on file is Plaintiffs' Third Amended Complaint.

4 In the event the Court were to reconsider its prior ruling, Plaintiffs would necessarily have to  
5 file a Fourth Amended Complaint, which would supersede the Third Amended Complaint and  
6 render Defendant's pending motion to dismiss moot. The Court concludes that the more  
7 appropriate and efficient course of action is for Plaintiffs to file a motion for leave to amend to  
8 add causes of action, pursuant to Federal Rule of Civil Procedure 15(a). Accordingly,

9 IT IS HEREBY ORDERED THAT:

10 1. By no later than July 30, 2010, Plaintiffs shall file a motion for leave to amend.  
11 Defendant shall file its response by August 11, 2010, and Plaintiffs shall file their reply by  
12 August 18, 2010. The opening and opposition briefs may not exceed ten pages, and the reply  
13 shall not exceed five pages. The Court will take the matter under submission on the date the  
14 reply is due. No hearing will be held on the motion unless otherwise ordered by the Court.  
15 Fed.R.Civ.P. 78(b).

16 2. Defendant's motion to dismiss the Third Amended Complaint is DENIED  
17 without prejudice. In the event the Court denies Plaintiff's motion for leave to amend,  
18 Defendant may renote its motion on the Court's calendar. In that event, the parties need not  
19 refile their briefs (Docket 44, 50, 51) in connection with the motion.

20 3. This Order terminates Docket 41 and 44.

21 IT IS SO ORDERED.

22 Dated: July 20, 2010

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge